

2. When Should a Qualified Lender Notify a Borrower That the Application for Restructuring Has Been Denied and What Information May the Borrower Use in the CRC Review? [§ 617.7310(c)]

Confusion has arisen over the years as to when in the restructuring process the qualified lender must offer the right of CRC review. In addition, an FCS institution asked if a borrower may present the original application for restructuring to the CRC even if the original application was not the basis for the ultimate restructuring decision. In the preamble to § 614.4443,¹² we expressed the intent for the lender and borrower to engage in “* * * a cooperative effort to attempt to find solutions before the CRC process began.” We believe Congress expected borrowers and lender to negotiate applications for restructuring. The negotiations, which may include plan modifications, must reach a conclusion. Once negotiations are concluded and the lender denies the borrower’s request, the borrower is then given the opportunity to appear before the CRC. The borrower may present the initial application for restructuring or any subsequent modifications that resulted in denial by the qualified lender.

We propose moving § 614.4443(b) to § 617.7310(c).

3. Who Serves on the CRC? [§ 617.7305]

Section 4.14(a) of the Act requires the membership of the CRC to include at least one farmer-member of the qualified lender’s board of directors. In the preamble to the existing regulations,¹³ we explained farmer board representation means a farmer, rancher, or producer or harvester of aquatic products. We are clarifying that farmer board representation also means an elected board member, as opposed to an appointed board member.

Section 4.14(a) of the Act also requires farmer board representation and prohibits the loan officer involved in the original credit decision from serving on the CRC. The Act does not prohibit delegations. However, existing § 614.4442 provides that the board member serving on the CRC may designate an alternate to serve on the committee as long as the alternate is also an elected farmer board member, but prohibits non-board members of the CRC from delegating committee duties. The FCC requested that the restriction prohibiting delegations be removed. We agree and propose removing the restriction in proposed § 617.7305. As long as the replacement members of the

CRC are experienced and capable of rendering thoughtful and careful review of adverse credit decision, we believe the delegation restriction is unnecessary.

4. Must a Qualified Lender Notify an Applicant or Borrower of a CRC Meeting? [§ 617.7310(a)]

The existing rule at § 614.4443 does not require a qualified lender to notify an applicant or borrower of the CRC meeting date where the applicant or borrower’s request for review will be discussed. Although we do not believe that this has been a problem in the past, we wish to correct this oversight. Proposed § 617.7310(a) requires a qualified lender to inform the applicant or borrower of the CRC meeting date at least 15 days in advance of when the request for review will be discussed.

5. What Information May Not Be Submitted to the CRC? [§ 617.7310(c)]

The FCC commented that the CRC is not a substitute for the normal credit process and the committee should not act on new information or negotiate a new proposal. The FCC requested that we emphasize that the CRC review is of the denied loan or restructuring request and is not an opportunity for the applicant or borrower to introduce new information. We believe the existing rule clearly indicates that the CRC function is one of review and the CRC meetings are not forums for new issues. Existing § 614.4443(b) allows an applicant or borrower to submit “any documents or other evidence” to the CRC that supports the application under review. The purpose of the review is to provide the opportunity for the applicant or borrower to demonstrate that the loan or restructuring request satisfies the credit standards of the qualified lender. The Act makes no provision for presenting a new application to the CRC.

We propose moving § 614.4443(b) to § 617.7310(c).

6. Who Has the Right to an Independent Collateral Evaluation? [§ 617.7310(d)]

A System institution and the FCC suggested that the right to an independent collateral evaluation only applies to those applicants or borrowers whose applications were denied because of insufficient real estate collateral. We disagree. The Act does not place conditions on the right to an independent collateral evaluation. Section 4.14(d) provides applicants and borrowers the right to have the CRC review independent collateral evaluations, whether or not insufficient collateral was the reason for the loan or

restructure denial. However, we believe that if qualified lenders provide complete disclosure to the applicant or borrower of the reasons for the loan or restructure denial, unnecessary independent collateral evaluations will not occur.

We propose moving § 614.4443(c) to § 617.7310(d).

7. How Long Does an Applicant or Borrower Have To Obtain an Independent Collateral Evaluation? [§ 617.7310(d)(2)]

The FCC and one System institution suggested we establish a 60-day limit to seek an independent collateral evaluation. Section 4.14(d) of the Act provides that an applicant or borrower who receives an adverse credit decision may request an independent collateral evaluation in connection with an appeal to the CRC. Existing § 614.4443(c)(2) requires the collateral evaluation to be completed within a reasonable period of time. The Act does not provide a more definitive time limit for completing an independent evaluation, although the legislative history of section 4.14(d)(2) of the Act indicates that Congress was concerned with potential delays in this process. We do not believe a regulatory time limit to obtain an independent evaluation is appropriate. We recognize that in some cases the applicant or borrower legitimately may need longer than the 60-day limit recommended by the commenters, particularly if there are no authorized independent evaluators in the local area. We have instead proposed in § 617.7310(d)(2) a 30-day limit for applicants or borrowers to enter into a contract for evaluation services. We believe this time limit will help ensure that the review process is not unnecessarily delayed.

As a result of this change, we propose removing that portion of existing § 614.4443(c)(3) stating “* * * provided the applicant’s or borrower’s evaluator has provided a copy of the evaluation report to the lender not less than 15 days prior to any scheduled meeting of the credit review committee.” We originally adopted this requirement to assist a qualified lender in the situation where a borrower is attempting to delay the CRC review process. In re-evaluating our entire borrower rights regulations, however, we believe the better approach is to require the borrower to contract with an independent evaluator within 30 days. By removing this portion of the existing rule, we do not intend an applicant or borrower to delay submitting an independent collateral evaluation to the qualified lender. An applicant or borrower should make every effort to provide the independent

¹² *Id.* at note 4.

¹³ *Id.* at note 4.